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U.S. Department of Justice
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Washington, DC 20044-7611

In re: The Dow Chemical Company, et al.
v. Clarke Container, Inc., et al.
Our File No. 32192/1003

Dear Annette:

This will supplement our most recent telephone conference concerning the United States EPA's position with regard to settlement. Without reiterating the substance of our September 9, 2002 correspondence and the referenced settlement discussions, we remain confident that the Dick Clarke entities are at best, a *de minimis* quantity contributor to the Skinner site. However, in an extraordinary effort to resolve this matter without lengthy, costly and unnecessary litigation, we hereby submit the following analysis for your consideration.

Initially, we are vehemently opposed to payment for any alleged Phase I and/or II deliveries to the Skinner site. As you are aware, Thomas Clarke did not even have a dump truck which could have been delivering to the Skinner site until the early 1960s. Further, in addition to the fact that Thomas Clarke was in direct competition with Skinner, there is ample evidence to indicate that steel and other materials were purchased by Thomas Clarke from Ray Skinner to construct the Clarke incinerators. It is inconceivable that Thomas Clarke would pay to dump waste at the Skinner landfill site when waste could be burned in the Clarke incinerators and Thomas Clarke had a documented substantial outstanding debt.

It is also clear that the evidence does not support a finding that Dick Clarke entities, or any Clarke entity for that matter, delivered cyanide ash to the Skinner site. The only testimony that will be presented at trial of this matter specifically indicates that Ford directed its drivers as to where to dump waste materials. In fact, Ralph Dent indicated that

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a Ford driver would not deliver waste to the Skinner site unless and until he received authority to do so from Dispatch.

As you are aware, it has been determined that there are approximately 372,906 cubic yards of waste disposed at the Skinner site. Using the numbers in your analysis and based on actual evidence, Dick Clarke entities delivered 3,540 cubic yards to the site in the late 80s. If we take into account your multiplier (40% premium required to be paid by the parties that cashed out) the Dick Clarke entities would be responsible for at most \$98,624.40. This figure does not take into account the bulky nature of the construction and demolition waste and/or the undisputed evidence that Dick Clarke entity employees made extraordinary efforts to avoid collecting hazardous materials/substances. Further, it does not take into account that the Ohio EPA sanctioned the deliveries.

In considering the above together with the substantial cost of litigation and necessary time involved to further pursue this matter, our client is willing to resolve this matter for \$70,000.00. This offer is extremely generous in light of the expenses our client has incurred to date and the lack of any substantial evidence that any Dick Clarke entity actually delivered a hazardous material/substance to the Skinner site. Please contact the undersigned to further discuss this matter.

I look forward to hearing from you.

Very truly yours,

GARY F. FRANKE CO., L.P.A.



Gary F. Franke

GFF:pt